

§ 780.317

weeks of agricultural employment by the employee for all employers in the preceding calendar year that determines whether he meets the 13-week test. In this respect a self-employed farmer who works as a hand harvest laborer during part of the year is considered to be "employed" in agriculture only during those weeks when he is an employee of other farmers. Thus, such weeks of employment are to be counted but any weeks when he works only for himself are not counted toward the 13 weeks.

(d) The 13-week test applies to each individual worker. It does not apply on a family basis. To carry the example in the preceding section further, members of a tractor driver's family who reside on the farm could be employed in picking cotton within the terms of the exemption even though the driver had been employed in agriculture as much as 13 weeks in the previous calendar year, so long as the family members themselves had not.

(e) If an employer claims this exemption, it is the employer's responsibility to obtain a statement from the employee showing the number of weeks he was employed in agriculture during the preceding calendar year. This requirement is contained in the recordkeeping regulations in § 516.33 (d) of this chapter.

§ 780.317 Man-day exclusion.

Section 3(e)(2) specifically excludes from the employer's man-day total (as defined in section 3(u)) employees who qualify for exemption under section 13(a)(6)(C). (See § 780.301.) This man-day count is a basic factor in the application of the section 13(a)(6)(A) exemption. (See § 780.302 *et seq.*)

§ 780.318 Exemption for nonlocal minors.

(a) Section 13(a)(6)(D) of the 1966 Amendments to the Fair Labor Standards Act exempts from the minimum wage and overtime provisions "any employee employed in agriculture * * * if such employee (other than an employee described in clause (C) of this subsection): (1) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is cus-

29 CFR Ch. V (7-1-14 Edition)

tomarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (2) is employed on the same farm as his parent of persons standing in the place of his parent, and (3) is paid at the same piece rate as employees over age 16 are paid on the same farm."

(b) It is clear from the legislative history of the amendments that the exemption was intended to apply, where the other specific tests are met, only to minors 16 years of age or under who are not "local" in the sense that they are away from their permanent home when employed in agriculture. Specifically the exemption was intended to apply in the case of the children of migrants who typically accompany their parents in harvesting and other agricultural work. (S. Rept. No. 1487, 89th Cong., second sess., to accompany H.R. 13712, pp. 9 and 10)

§ 780.319 Basic conditions of exemption.

(a) Section 13(a)(6)(D) applies to an employee engaged in agriculture who meets all of the following tests:

(1) Is not a local hand harvest laborer,

(2) Is 16 years of age or under,

(3) Is employed as a hand harvest laborer,

(4) Is paid on a piece rate basis,

(5) Is employed in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(6) Is employed on the same farm as his parent or person standing in the place of his parent, and

(7) Is paid at the same piece rate as employees over age 16 are paid on the same farms.

(b) Some of these requirements which are common to both sections 13(a)(6)(C) and 13(a)(6)(D) have already been discussed in connection with section 13(a)(6)(C) and need not be repeated. They are found in §§ 780.311 (employed in agriculture), 780.312 (hand harvest laborer), 780.313 (piece rate basis), and 780.314 (operations customarily * * * paid on a piece rate basis). The other requirements are discussed in the following sections.